

**IN THE UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS,
HOUSTON DIVISION**

IN RE:

§

**OUTRIGHT AVIONICS, LLC
Debtor**

§

CASE NO. 20-32115

§

§

Chapter 11

§

§

PLAIN STATE BANK'S UNOPPOSED MOTION FOR RELIEF FROM STAY

THIS IS A MOTION FOR RELIEF FROM THE AUTOMATIC STAY. IF IT IS GRANTED, THE MOVANT MAY ACT OUTSIDE OF THE BANKRUTPCY PROCESS. IF YOU DO NOT WANT THE STAY LIFTED, IMMEDIATELY CONTACT THE MOVING PARTY TO SETTLE. IF YOU CANNOT SETTLE, YOU MUST FILE A RESPONSE AND SEND A COPY TO THE MOVING PARTY AT LEAST 7 DAYS BEFORE THE HEARING. IF YOU CANNOT SETTLE, YOU MUST ATTEND THE HEARING. EVIDENCE MAY BE OFFERED AT THE HEARING AND THE COURT MAY RULE.

REPRESENTED PARTIES SHOULD ACT THOROUGH THEIR ATTORNEY.

THERE WILL BE A HEARING ON THIS MATTER ON JUNE 16, 2020 AT 1 P.M. IN COURTROOM 401, 515 RUSK, HOUSTON, TEXAS 77002.

TO THE HONORABLE CHRISTOPHER M. LOPEZ,
UNITED STATES BANKRUPTCY JUDGE:

NOW COMES, PLAINS STATE BANK ("Movant") and moves this Honorable Court, pursuant to 11 U.S.C. §362(d), and 553(a) of Title 11 of the United States Code ("Code") and Rules 4001(a), and 9014 of the Federal Rules of Bankruptcy Procedure ("Bankruptcy Rules"),

and Bankruptcy Local Rule 4001, for Relief from the Automatic Stay as follows:

SUMMARY OF RELIEF REQUESTED

1. Movant requests relief from the automatic stay to exercise its state law rights to set off the \$26,779.59 in the Debtor's pre-petition bank account at Movant against the \$355,894.04 owing to Movant on the petition date.

JURISDICTION

2. This Court has jurisdiction over this Motion under 28 U.S.C. §§157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. §157(b)(2). Venue of this proceeding and this Motion in this Court is proper under 28 U.S.C. §§1408 and 1409.

3. The statutory bases for the relief requested herein are §§362(b)(1) and (2) and 553(a) of Title 11 of the United States Code ("Bankruptcy Code").

FACTUAL BACKGROUND

4. Movant loaned \$350,000.00 (the "Loan") to the Debtor Outright Avionics, LLC ("Debtor") as evidenced by a Promissory Note dated September 4, 2019 in the original principal amount of \$350,000.00 (the "Note"). The Loan is subject to a Letter Loan Agreement dated September 4, 2019 (the "Loan Agreement"). The Debtor also executed a Security Agreement dated September 4, 2019 pledging the personal property of Borrower (the "Property") as security for repayment of the Indebtedness (the "Security Agreement"). On November 15, 2019, Movant filed a financing statement with the Texas Secretary of State (the "Financing Statement"). The Loan Agreement, Note, the Security Agreement and the Financing Statement are collectively referred to as the "Loan Documents") and are attached hereto as **Exhibit A**

5. By letter dated March 20, 2020, Movant gave the Debtor notice that the Loan was in default for the failure to make payments as they became due in addition to certain other covenant

defaults under the terms of the Loan Documents (the “Designated Events of Default”) and gave notice of Movant’s intent to accelerate the Loan if the Designated Events Defaults were not cured by ten days thereafter (the “Demand Letter”). The Designated Events of Default were not cured on or before 10 days after the date of the Demand Letter. By Letter Dated April 1, 2020, Movant gave the Debtor that the indebtedness arising under the Loan had been accelerated (the “Notice of Acceleration Letter”). Copies of the Demand Letter and the Notice of Acceleration Letter are attached hereto as **Exhibit B**.

6. The Debtor pre-petition maintained a bank account at Movant (the “Account”). On April 7, 2020, the petition date (“Petition Date”), there was a balance of \$26,779.59 in the account (the “Funds”).

7. Movant was owed \$355,894.04 by the Debtor on the Petition Date.¹

ARGUMENT AND AUTHORITIES

A. **Cause Exists for Relief Because the Debtor has No Equity and the Funds are Not Necessary for an Effective Reorganization.**

8. Movant has a right of setoff against the Funds. Section 34.307 of the Texas Finance Code provides:

...[A] bank has a right of set-off, without further agreement or action, against all accounts owned by a depositor to whom or on whose behalf the bank has made an advance of money by loan, overdraft, or otherwise if the bank has previously disclosed this right to the depositor. If the depositor defaults in the repayment or satisfaction of the obligation, the bank, without notice to or consent of the depositor, may set off or cancel on its books all or part of the accounts owned by the depositor and apply the value of the accounts in payment of and to the extent of the obligation.

Section 10 of the Loan Agreement provides that Movant has a lien on all deposits of the Debtor

¹ This includes any default rate interest or post-petition attorney’s fees to which Movant may be entitled to recover.

and that it has the right to apply and/or set off against any such amount of such deposits to the amount to Movant without prior notice to the Debtor.

9. Section 553 of the Bankruptcy Code provides that the Bankruptcy Code (other than sections 362 and 363) does not affect the right of a creditor to offset a mutual debt owing to the creditor to the debtor that arose pre-petition against a claim of a creditor that arose pre-petition except in certain circumstances not applicable here.²

10. Movant seeks relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(2). A Court may also terminate or modify the automatic stay under 11 U.S.C. § 362(d)(2) "if the debtor does not have an equity interest in such property and such property and is not necessary to an effective reorganization."

11. The term "equity," as used in Section 362(d)(2) is the difference between the value of the subject property and the encumbrances against it. *In re Sutton*, 904 F.2d 327, 329 (5th Cir. 1990). A creditor seeking relief from the automatic stay pursuant to § 362(d)(2) has the burden to prove the debtor's lack of equity while the debtor has the burden to prove that the subject property is necessary to effectively reorganize. *United Savings Ass'n of Texas v. Timbers of Inwood Forest Assocs., Ltd.*, 484 U.S. 365 (1988).

12. In this case, the estate has no equity in the Funds because the amount owed to Movant on the petition date, \$355,894.04, greatly exceeds the amount of the Funds, \$26,779.59. Since this is a chapter 7 liquidation proceeding, Movant is not required to show that the Funds are not necessary for an effective reorganization.

B. The 14-day Stay Should be Waived

13. Movant requests that the 14-day stay imposed by Fed. R. Bankr. P. 4001(a)(3) be waived. The 14-day stay serves no purpose in this case.

² The claim has been disallowed or transferred under certain circumstance, neither of which are applicable here.

14. Movant reserves all rights and remedies and does not waive any rights by the filing of this Motion, all of such rights are expressly reserved.

WHEREFORE, PLAINS STATE BANK respectfully requests that this Court modifying the Automatic Stay imposed by §362(d) and enter an Order:

- A. granting this Motion;
- B. permitting and approving Plains State Bank to exercise its state law right of setoff against the Funds;
- C. that the Notice of Motion, as given, is deemed sufficient and proper;
- D. that pursuant to Rule 4001(a)(3) of the Federal Rules of Bankruptcy Procedure, this Order shall not be stayed and shall be effective immediately; and
- E. for any further relief that this Court deems just and appropriate

DATED MAY 22, 2020

Respectfully Submitted,

By:/s/ Lisa A. Powell

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ATTORNEYS FOR PLAINS STATE BANK

CERTIFICATE OF CONFERENCE

I hereby certify that on May 21, 2020, I conferred with J. Maxwell Beatty, the attorney for Christopher Jones, Chapter 7 Trustee, and he advised that the Trustee does not oppose this motion.

/s/ Lisa A. Powell
Lisa A. Powell

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the *Motion for Relief from Stay (without exhibits)** was served by U.S. First Class Mail on May 22nd, 2020 on the parties listed below and, on the parties, listed on the Debtor's Mailing Matrix attached hereto (that includes all creditors of any type) and on the parties entitled to receive electronic notice through the Court's ECF system.

/s/ Lisa A. Powell
Lisa Powell

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*Exhibits available upon request

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